

MAY 01 2007

JAMES R. LARSEN, CLERK  
DEPUTY  
SPOKANE, WASHINGTONUNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID EDWARD JOHNSON,

Defendant.

No. CR-03-099-JLQ

ORDER GRANTING MOTION TO  
CORRECT SENTENCE, IN PART,  
AND DENYING MOTION TO  
VACATE AND/OR SET ASIDE  
SENTENCE

The Defendant has filed a *pro se* Motion To Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. Pursuant to the Order of this court the Government has filed its Response (C.R. 90). *Inter alia*, the Government's Response states that the transcript of the Supervised Release violation and sentencing hearing on October 17, 2006 does not reveal that the court advised Mr. Johnson of his appeal rights. By reason thereof, the Defendant has shown good cause and prejudice for not pursuing his claims herein by direct appeal and the court will therefor consider those claims.

The history of this matter is set forth in the Government's response. On July 14, 2004, the court revoked the probation granted to the Defendant and sentence the Defendant to a term of prison of nine (9) months to be followed by a term of supervised Release of twenty-four (24) months. This sentence was authorized by the felony criminal statutes covering the numerous uttering counterfeit bills to which the Defendant pled guilty. Upon the Defendant's release from his prison term on or about March 12, 2005, he commenced serving his 24 month term of Supervised Release. On

1 June 12, 2006, the Defendant's Supervised Release was revoked. He was sentenced to  
2 serve a term of 9 months incarceration to be followed by a term of 18 months Supervised  
3 Release. The Defendant was released from prison on this 9 month term on September  
4 14, 2006 and commenced serving the 18 months of Supervised Release. After again  
5 violating his Supervised Release as found on October 17, 2006, the Defendant's  
6 Supervised Release was revoked and he was sentenced to a term of imprisonment of 24  
7 months "with credit for time served." This language was utilized with an intent that the  
8 Defendant be credited for the 9 months previously served upon the previous revocation  
9 of Supervised Release, however, that intent may not have been clear. In order that the  
10 true prison sentence be clear, the court will enter an Amended Judgment and Sentence  
11 from the October 17, 2006, hearing, stating that the prison sentence was a period of 15  
12 months commencing on October 17, 2006, the day he was remanded to the custody of  
13 the United States Marshal. To that extent the Defendant's Motion to Correct Sentence  
14 is Granted. The remainder of his Motion is without merit and is Denied.

15 In order that the Defendant may have an opportunity to appeal this Order and his  
16 sentence, the Defendant is advised that an Notice of Appeal to the Ninth Circuit Court  
17 of Appeals must be filed within ten (10) days of receipt of a copy of this Order and the  
18 Amended Judgment and Sentence.

19 The Clerk of this court shall enter this Order and forward copies to counsel and  
20 to the Defendant at Sea-Tac Detention Center along with a copy of the Amended  
21 Judgment. The Defendant's prisoner number is 10703-085.

22 DATED this 1st day of May 2007.

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25 JUSTIN L. QUACKENBUSH  
26 SENIOR UNITED STATES DISTRICT JUDGE  
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